

APPEAL NO. 010314

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was originally held on October 19, 2000. The Appeals Panel, in Texas Workers' Compensation Commission Appeal Nos. 002643 and 002698, decided December 18, 2000, remanded the case for the hearing officer to enter specific findings based upon evidence adduced at the hearing. With respect to the issues before her, the hearing officer determined that the respondent's (claimant) compensable injury of _____, is a producing cause of his lumbar spine condition after December 24, 1998; that the claimant did not sustain a new compensable lumbar injury on _____; that the claimant did not timely report his alleged _____, injury; and that the claimant did not have disability as a result of the alleged injury of _____, because he did not sustain a new compensable injury. In its appeal, the appellant/cross-respondent (carrier 1), the carrier for the 1996 compensable injury, asserts that the hearing officer erred in determining that the claimant did not sustain a new compensable injury on _____. In its response to carrier 1's appeal, the respondent/cross-appellant (carrier 2) urges affirmance. Carrier 2 also filed a cross-appeal, challenging a factual finding related to the claimant's ability to work at his preinjury wage after December 24, 1998. The appeal file does not contain a response to carrier 2's cross-appeal from carrier 1 or a response to either appeal from the claimant.

DECISION

Affirmed.

This case turns on whether the claimant suffered a new compensable injury on _____, or is suffering a continuation of the injury he previously suffered on _____. This is an issue of fact. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. Conflicting evidence was presented at the hearing as to whether the claimant continued to suffer the effects of his prior compensable injury or whether he sustained a new injury. It was within the province of the hearing officer to resolve the conflicts in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). As the fact finder, the hearing officer was free to reject the claimant's testimony in favor of the evidence tending to demonstrate that the claimant's condition after _____, was related to his _____, compensable injury. Nothing in our review of the record reveals that the hearing officer's determination that the claimant did not sustain a new compensable injury on _____, is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Turning briefly to carrier 2's cross-appeal, we perceive no error. In Finding of Fact No. 4, the hearing officer stated that "[d]ue to the claimed injury, Claimant was unable to

obtain and retain employment at wages equivalent to the pre-injury wage beginning January 4, 1999, and continuing through the date of the hearing on October 19, 2000.” In essence, the hearing officer is determining that as a result of the claimant’s lumbar condition after _____, he was unable to obtain and retain employment at his preinjury wage for the period from January 4, 1999, to October 19, 2000. There was evidence to support the hearing officer’s finding; thus, we will not disturb it. However, we note that the hearing officer properly concluded that the claimant did not have disability because he did not sustain a new injury on _____, and there was no disability issue before her with respect to the 1996 compensable injury.

The hearing officer’s decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge